

REMARKS

The Examiner's comments together with the cited references have been carefully studied. Favorable reconsideration in view of the following remarks is respectfully requested.

Applicants herewith file a terminal disclaimer in compliance with 37 CFR 1.321(c) to overcome provisional double patenting rejections based on nonstatutory double patenting grounds. This terminal disclaimer is filed to correctly identify the applications being disclaimed by Serial Numbers, rather than Publication numbers.

Relying on 35 U.S.C. 102(e), the Examiner rejected claims 1-3 and 5-19 as being anticipated by Liu (US 6,548,149). According to the Examiner:

Liu teaches an ink jet recording element that contains a support and at least one ink-receiving layer ... a hydrosoluble binder ... and an aluminosilicate polymer that is dispersed in the binder matrix ... has an Al/Si molar ratio between 1 and 4 ... Claims 1-16 are viewed as product-by-process claims and hence the methods that the aluminosilicate is created by are not pertinent, unless applicant can show a different product is produced ...

Applicants respectfully submit that Liu et al. clearly does not anticipate the present claimed invention. Anticipation requires that each and every claimed element necessarily be disclosed in the applied reference. As explained in Applicant's previous response, Claim 1 of the instant invention requires use of an aluminosilicate polymer obtained by treating a mixture of aluminum and silicon alkoxide with aqueous alkali in the presence of silanol groups, the aluminum concentration, Al/Si molar ratio and alkali/Al molar ratio being maintained at specified concentrations; stirring the mixture at a temperature between 15°C and 35°C long enough to form an aluminosilicate polymer; and eliminating the by-products. Thus, for a proper anticipation rejection, the material obtained by the process of Liu et al would need to necessarily result in an aluminosilicate polymer that is identical to the polymer obtained in accordance with the specified process of the presently claimed invention. These conditions are taught, however, as resulting in a unique composition in comparison to aluminosilicate polymers of similar Al/Si ratios which are prepared by different processes, as evidenced by the Raman spectrum (see Figures 2 and 3) of aluminosilicate polymers of Examples 2 and 3 prepared in accordance with the invention, in comparison to the Raman spectrum (Figure 1) of a comparison

USSN 10/522,006

aluminosilicate polymer prepared in a process employing heating substantially above ambient. These examples are consistent with Applicant's previous explanation that those skilled in the field of aluminosilicate chemistry understand that the nature of the resulting product is extremely dependent upon the method of production. Liu et al. simply clearly does not teach use of an aluminosilicate polymer that is necessarily identical to one obtained by the specified process, and thus clearly does not anticipate the present claimed invention.

While the comparison polymer of Example 1 of the present application is prepared in a process different than that employed in Liu et al., and thus may not provide direct evidence of distinction between the material obtained as described by Liu et al and that obtained in accordance with the present invention, Liu et al. is similar to the comparison example of the present invention (and similarly distinguished from the aluminosilicate polymers employed in the present invention) in that the process employed in Liu et al. includes heating substantially above ambient temperatures in order to obtain the aluminosilicate composition thereof. The process employed in Liu et al is further distinguished from that employed to obtain the polymers employed in the instant invention in that Liu et al employs isopropyl alcohol as solvent and an acid catalyst, while the present invention polymer is formed by utilizing an alkali and water as reaction solvent, in the presence of silanol groups as claimed. In view of such stark distinctions between the processes employed in the claimed invention and that of Liu et al., in combination with the fact the skilled artisan in the field of aluminosilicate chemistry understands that the nature of the product is extremely dependent upon the method of production, and the demonstrated fact that an even closer process such as in comparison Example 1 of the present application resulted in actual distinctions in the materials obtained from those employed in the claimed invention of the instant application, it is clear that there is no reasonable basis for the Examiner's assertion that use of the aluminosilicate as prepared in Liu et al anticipates the use of aluminosilicate polymers as specified in accordance with the present claimed invention.

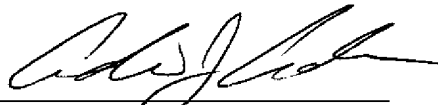
Applicants have provided a comparison example to a material prepared by a process believed to be substantially closer to the invention than the process employed in Liu et al, and the process employed in Liu et al is more similar to the comparison example in employing heating substantially above ambient and further

distinguished from the process employed in the present invention by employing acid catalyst. Accordingly, it is unjustified to require Applicant's to perform even further testing of other materials prepared by such even further distinguished processes, as the evidence of record simply does not suggest that the material of Liu et al is the same as that claimed. In view of the clear evidence that different processes result in different materials, the Examiner's allegation of anticipation is clearly improper, and reconsideration and withdrawal of this rejection is respectfully requested.

While the Examiner has only rejected the pending claims as being anticipated by Liu et al., it is further noted that to the extent the distinct materials obtained by the process required by claim 1 were not previously known, their use in the claimed recording element could further not have been obvious.

In view of the foregoing remarks and amendment, the claims are now deemed allowable and such favorable action is courteously solicited. Should the Examiner consider that additional amendments are necessary to place the application in condition for allowance, the favor is requested of a telephone call to the undersigned counsel for the purpose of discussing such amendments.

Respectfully submitted,



Andrew J. Anderson
Attorney for Applicant(s)
Registration No. 33,564

AJA:clb
Rochester, NY 14650
Telephone: (585) 722-9662
Facsimile: (585) 477-1148

If the Examiner is unable to reach the Applicant(s) Attorney at the telephone number provided, the Examiner is requested to communicate with Eastman Kodak Company Patent Operations at (585) 477-4656.

USSN 10/522,006